In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 202

SIESEL A. FRANKLIN AND HELEN W. FRANKLIN,
PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioners were injured when their small private aircraft crashed in the course of a landing at Meigs Field, Chicago. They sued the United States (under the Federal Tort Claims Act) and the federal air traffic controller, alleging that the accident had been caused by the negligence of the controller in permitting a helicopter to create air turbulence on the runway shortly before petitioners' attempted landing and in failing to warn petitioners of this danger. The district court granted recovery to Helen Franklin but denied recovery to Siesel Franklin, the pilot, on the ground that he was contributorily negligent.

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Without questioning the proposition that the United States would be liable for the negligence of a federal air traffic controller, the court of appeals reversed the decision in favor of Helen Franklin, finding it "clearly erroneous" for two independent reasons. *First*, the existence of helicopter wake-turbulence problems was unknown to the industry at the time of the accident, and thus the controller was plainly not negligent. *Secondly*, the undisputed scientific evidence showed that helicopter turbulence could not, in any event, have caused the accident in this case. There is no occasion for further review of this holding. It involves neither the adoption of a novel standard of review nor any other question of law. It turns solely on the particular facts of the case, as the very careful and detailed opinion of the court of appeals demonstrates.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

JULY 1965.

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